

II. Compliance Examinations — Analysis

quantity of complaints suggest any other areas in need of in-depth review?

2. Develop and document a preliminary assessment of the institution's performance related to this area. Are the institution's consumer complaint response processes generally strong, adequate, weak? On what is this assessment based?

Evaluating the Audit Function

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to the audit function.*
- *Audit policy, external audit agreement, or other written audit guidelines;*
- *Compliance-related internal and external audit reports, responses, and follow-up;*
- *Internal and external audit workpapers;*
- *Institution organizational chart;*
- *BOD minutes and compliance committee minutes; and*
- *Examiner notes from discussions with audit staff, compliance officer, senior managers, etc.*

Exception: Do not request fair lending self-testing reports (or results). If, however, a financial institution voluntarily provides documentation of its fair lending self-testing, review the findings as part of the fair lending examination.

NOTE: A financial institution's audit or review of loan files, internal policies, and training material may indicate difference in the treatment of applicants that could constitute a violation of the fair lending laws.

1. Conduct documentation review and have sufficient discussions with management to answer the following questions:
 - Are internal audits conducted? How often and by whom?
 - If internal audits are conducted, is the auditor independent of the transaction being audited? If not, is this considered acceptable considering the institution's resources and risk profile?
 - Are external audits conducted? How often and by whom?
 - Are internal/external audits comprehensive in scope? If audits are not comprehensive, do they cover all areas of significant risk? Do they include reviews at every branch location?
 - Are audit findings compiled in writing? Do they identify the nature and circumstances (i.e., cause, time period, etc.) of the identified exceptions? Do

they provide management enough information to (1) determine cause and (2) formulate an appropriate corrective action?

- Are internal/external audits of sufficient quality?
- Are the audit findings communicated to the Board either directly or through the compliance committee?
- Have audit report findings been appropriately addressed by the Board and senior management in a timely manner and include corrective actions and follow-up efforts?
- Are written audit reports readily available for examiner review?

2. Develop and document a preliminary assessment of the institution's performance related to this area. Is the audit function generally strong, adequate, or weak? On what is this assessment based?

Transaction Sampling and Testing

After analyzing the CMS elements in relationship to a bank's operational risks, the EIC must decide what transaction sampling and testing is necessary. The number of transactions and the particular regulatory requirements to be reviewed should be carefully tailored to weaknesses identified in the CMS as it relates to specific operational areas. For example, if there is a weakness in monitoring the calculation of Annual Percentage Rates (APRs) in open-end credit transactions, then a sample of those calculations should be tested; it would not be necessary to test all Truth in Lending Act (TILA) requirements.

The severity of CMS weakness and operational risk will dictate the intensity of transaction testing; greater weakness and higher risk will generally lead to the review of more transactions. If the examiner finds a moderate degree of risk, then sufficient testing should be done to support a conclusion. Depending on the importance of an element, the examiner may find it appropriate to spot-check a couple of transactions to support a favorable conclusion. If no transaction testing in a particular regulatory area was done in the previous examination, then at least a spot-check should be done at the current examination, even if there are no risk indicators. In certain cases, however, management's admission that a violation occurred is sufficient to warrant the citation without transaction testing. This also negates the need to list specific transactions in the Report of Examination (ROE).

When transaction sampling and testing is conducted, the examiner should tailor the actual sample and test to the identified weakness. If testing is not considered necessary to support conclusions about an element of the CMS or with respect to a particular operational area, appropriate documentation should be retained in the workpapers and

comments should be included in the Risk Profile and/or ROE to support this conclusion.

Consultation Policy

Consultations between Field, Regional and Washington staff members help maintain the quality and consistency of compliance, fair lending and CRA examinations and supervision. Consultation alerts senior DSC officials to significant or unusual supervisory issues, which ensures that these issues receive appropriate and timely consideration. Current information from examiners in the field also helps the FDIC and interagency groups develop more realistic policies and regulations.

Depending on the issue, a consultation may be anything from a simple phone conversation or a series of e-mails, to formal memoranda. Examination staff should consult with regional or field office management or staff if they find an unusual issue or problem. In turn, regional or field office management and staff are encouraged to consult with Washington subject matter experts, particularly with respect to findings, issues or

potential violations requiring guidance with respect to new regulations, or involving emerging/sensitive policy concerns.

Certain situations, because of their sensitivity or potential impact, mandate that the Regional and/or Washington office(s) be consulted. Actions that require either approval or concurrence under delegated authority or DSC policy also require formal documentation.

If a consultation results in an outcome inconsistent with the examiner's recommendation, then the examiner and the review examiner should ensure that the language of the ROE is consistent with the final outcome.

References

DSC RD Memo 04-017: Consultation Policy and Procedures for Compliance Examination and Community Reinvestment Act Issues

<http://fdic01/division/dsc/memos/memos/6000/04-017.pdf>